PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:	)
	) Group Art Unit: 2142
Block, Robert et al.	)
	) Examiner: Prieto, Beatriz
Application No.: 09/513,015	)
	) Atty. Docket No: SUNMP576
Filed: February 25, 2000	)
	) Date: November 30, 2005
For: METHOD AND APPARATUS FOR	)
MAKING A COMPUTATIONAL SERVICE	)
HIGHLY AVAILABLE	)
	)

<u>CERTIFICATE OF MAILING</u>
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Sylvia Castillo

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Commissioner for Patents
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<u>PRE-APPEAL BRIEF REQUEST FOR REVIEW</u>

Dear Sir:

Applicant requests review of the final rejection in the above-identified application.
No amendments are being filed with this request. This request is being filed with a Notice of
Appeal. The review is requested for the reason(s) stated below.

Applicant is in receipt of an Advisory Action mailed November 8, 2005. Claims 1-5,
7-8 and 17-28 remain pending in the present application. Reconsideration of the present
application is earnestly requested in light of the following remarks and arguments. Please
note that for brevity, only the primary arguments directed to the independent claims are
presented. Additional arguments, e.g., arguments directed to the subject matter of the
dependent claims, will be presented if and when the case proceeds to Appeal.

DISCUSSION OF CLEAR ERRORS IN EXAMINER'S

REJECTION OF INDEPENDENT CLAIMS 1 AND 28

UNDER 35 U.S.C. § 103(a)

Claim 1 is rejected under 35 U.S.C. § 103(a) as being unpatentable over <u>Narendran</u> (U.S. Patent No. 6,070,191) in view of <u>SWEB: Towards a Scalable World Wide Web Server on Multicomputers</u> (hereinafter referred to as <u>Andresen</u>) in further view of <u>High Availability & Scalability with Dominos Clustering and Partitioning on AIX</u>, Sept. 1998 (hereinafter referred to as <u>IBM</u>). Claims 2-5, 7-8 and 17-27 depend from independent Claim 1. Claim 28 is rejected under 35 U.S.C. §103(a) as being unpatentable over <u>Narendran</u>-<u>Andresen</u> in view of <u>IBM</u> in further view of <u>Dean et al.</u> (U.S. Patent No. 6,023,762). The following clear errors in the Examiner's rejection are noted.

A Prima Facie Case Of Obviousness Is Not Established As To Independent Claim 1 Since The Combined Cited References Do Not Teach Or Suggest All Of Its Claimed Elements And Limitations

First, as acknowledged by the Examiner, no where does <u>Narendran</u> teach or suggest *a most recently accessed session* or *determining a most recently accessed session of a plurality of sessions on said plurality of servers*. (*See* Final Office Action Mailed August 31, 2005, page 4, section 8, Examiner stating, "Narendran does not explicit[ly] teach ... determining the most recently accessed session of a plurality of session[s] on said plurality of servers.").

Second, contrary to the Examiner's assertion, no where does <u>Andresen</u> teach or suggest *a most recently accessed session* or *determining a most recently accessed session of a plurality of sessions on said plurality of servers*. Rather <u>Andresen</u> teaches a "most recently accessed **host**." (*See* <u>Andresen</u>, section 1, paragraph 3, "DNS [name] caching enables a local DNS system to cache the name-to-IP address mapping, so that most recently accessed **hosts** can quickly be mapped." (emphasis added)). The Examiner cites <u>Andresen</u> at section 1, paragraph 3 in support of its argument that <u>Andresen</u> teaches "determining a most recent[ly] accessed session of a plurality of sessions on said plurality of severs, determining the location

(e.g. IP address) of said most recently access[ed]." However, Applicants respectfully point out that one of ordinary skill would recognize that a "host" is <u>not</u> the same as a "session" and, therefore, the two are not interchangeable. A "host" is a computer that is connected to a network. A "session" is, as pointed out in the present application, "a representation of those services that are executing on behalf of a user at any point in time." (*See* Present Application, page 5, lines 18-20).

Finally, no where does <u>IBM</u> teach or suggest *a most recently accessed session* or *determining a most recently accessed session of a plurality of sessions on said plurality of servers*. <u>IBM</u> only teaches providing synchronized redundancy of critical system components by clustering the critical system components, <u>IBM</u> does not mention anything related to an *accessed session*. (*See* <u>IBM</u>, Abstract).

The foregoing demonstrates that the cited primary references of <u>Narendran</u>, <u>Andersen</u>, and <u>IBM</u> alone, or in combination, do not teach or suggest all of the elements and limitations of independent Claim 1. Consequently, the Examiner's rejection fails to establish a prima facie case of obviousness for the present application and Applicants respectfully request that the 103 rejection be withdrawn.

<u>A Prima Facie Case Of Obviousness Is Not Established As To Independent Claim 1 Because Of A Failure By The Examiner To Provide Any Motivation Or Suggestion To Combine The Cited References</u>

<u>Narendran</u> explicitly discourages the combining of its teachings with <u>Andresen</u>. For example, <u>Narendran</u> outlines the shortcomings of prior art systems by stating generally, at column 1, lines 26-29, that "a high degree of load balance may not be achieved due to DNS name caching at different places in the network. This DNS name caching will also prevent the clients from tolerating server failures." <u>Narenden</u> then states at column 1, line 45 to column 2, line 4, regarding the system disclosed in <u>Andresen</u>, that "[a]lthough this system alleviates the problem of DNS name caching through the use of server redirection, the increase in the throughput is still limited by the dynamic redirection and the need to go over the network to fetch documents. Furthermore, failures are still a problem due to the use of DNS name caching." <u>Narenden</u> clearly discourages the teachings of <u>Andresen</u> and the Examiner's rejection does not address this conflict.

A disclosure in the prior art that teaches away from, or discourages, the making of a combination or references cited by the Examiner can undermine prima facie obviousness. (*See* MPEP § 2143.01, stating "where teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art considering the degree to which one reference might accurately discredit another"; In re Young, 18 USPQ2d 1089 (Fed. Cir. 1991); In re Gurley, 31 USPQ2d 11130, 1131 (Fed. Cir. 1994)).

Consequently, the Examiner's rejection fails to establish a prima facie case of obviousness for independent Claim 1 of the present application based on a lack of any motivation or suggestion to combine the cited references and Applicants, therefore, respectfully request that the 103 rejection be withdrawn.

A Prima Facie Case Of Obviousness Is Not Established As To Independent Claim 28 For At Least The Same Reasons Stated With Respect To Independent Claim 1

Dean et al., as acknowledged by the Examiner, also does not teach or suggest *a most recently accessed session* or *determining a most recently accessed session of a plurality of sessions on said plurality of servers*. (Final Office Action Mailed August 31, 2005, pages 7-8, section 9). Rather, Dean et al. discloses a "data access and retrieval system" for "storing caller information and security code information for enabling remote access of selections of user data and/or services to be transmitted over a communications network to a caller located at a said service terminal." (*See* Dean et al., Abstract).

Therefore, similar remarks as those presented above regarding Claim 1 also apply with equal force to independent Claim 28. Accordingly, for at least the reasons stated above regarding the Applicants submission that independent Claim 1 is patentable under 35 U.S.C. § 103(a) over Narendran-Andresen in view of IBM , Claim 28 is likewise patentable under 35 U.S.C § 103(a) over Narendran-Andresen is view of IBM in further view of Dean et al.
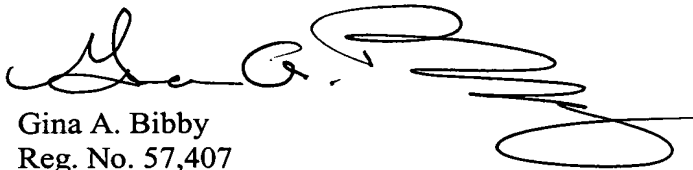
Accordingly, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection for pending Claim 28 be withdrawn.

CONCLUSION

In view of the foregoing, the Applicants respectfully submit that pending independent Claims 1 and 28 are in condition for allowance. Further, the Examiner's rejection of dependent Claims 2-5, 7-8 and 18-27 is additionally erroneous. Claims 2-5, 7-8 and 18-27 depend either directly or indirectly from independent Claim 1. Thus, for at least the reasons stated above regarding the Applicants submission that independent Claim1 is patentable under 35 U.S.C. § 103(a) over Narendran in view of Andresen in further view of IBM, dependent Claims 2-5, 7-8 and 18-27 are patentable under 35 U.S.C. § 103(a) over Narendran in view of Andresen in further view of IBM. Accordingly, a Notice of Allowance is respectfully requested as to pending Claims 1-5, 7-8 and 18-28. If any additional fees are due in connection with filing this request, the Commissioner is authorized to charge Deposit Account No. 50-0805 (Order No. SUNMP576).

Also enclosed herewith are the following items: (1) Return Receipt Postcard; and (2) Notice of Appeal.

Respectfully submitted,
MARTINE PENILLA & GENCARELLA, L.L.P.

Gina A. Bibby
Reg. No. 57,407

Martine Penilla & Gencarella, LLP
710 Lakeway Drive, Suite 200
Sunnyvale, California 94085
Telephone: (408) 774-6920
Customer Number 32291